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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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Tommy H. Tam

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75671 7590 02/18/2009  
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EXAMINER

LOFTIS, JOHNNA RONEE

ART UNIT

PAPER NUMBER

3624

MAIL DATE

DELIVERY MODE

02/18/2009

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 09/550,706	<b>Applicant(s)</b> TAM ET AL.	
	<b>Examiner</b> JOHNNA R. LOFTIS	<b>Art Unit</b> 3624	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 30 January 2009.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-21, 23-29, 37 and 40-43 is/are pending in the application.
- 4a) Of the above claim(s) 9-11, 13-19 and 25-29 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-8, 12, 20, 21, 23, 24, 37, 40-43 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 1/30/09 has been entered.
2. Claims 38-39 cancelled. Claims 1, 3-6, 8, 12, 20, 21, 23, 24, 37 and 40-43 are amended. Claims 1-21, 23-29, 37 and 40-43 are pending. Claims 9-11, 13-19 and 25-29 previously withdrawn.

### ***Response to Arguments***

3. Applicant's arguments filed 1/30/09 have been fully considered but they are not persuasive. Applicant argues that the combination of Ralston and Cree does not teach verifying that a selected appointment time is available in a second calendar and setting an online appointment if the selected appointment time is verified to be available in the second calendar. Examiner points to additional portions of Cree including column 5, lines 39-52 as well as column 31, line 61 - column 32, line 16. In these portions a conflict check is explained wherein entries in two different copies of a calendar are compared to determine if a conflict exists. If the conflict exists, one of the entries is deleted or modified. Inherently if no conflict arises, the appointment is set in both calendars. Cree also explains (column 4, lines 21-38) that each calendar may be maintained by a different person. Therefore the appointments are not really set until the

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calendars are reconciled and a check is made for conflict, since there is a chance one of the appointments will be modified or deleted upon the check for conflicts. Previous rejections in view of Ralston and Cree are maintained.

4. In light of recent Supreme Court precedent and recent Federal Circuit decisions, the claims warrant new rejections under 35 USC 101. These rejections are presented below. Please refer to the memorandum from John J. Love, Deputy Commissioner for Patent Examination Policy, dated January 7, 2009.

***Claim Rejections - 35 USC § 101***

5. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

6. Claims 1-8, and 40-43 are rejected under 35 U.S.C. 101. Based on Supreme Court precedent and recent Federal Circuit decisions, the Office's guidance to examiners is that a § 101 process must (1) be tied to another statutory class (such as a particular apparatus) or (2) transform underlying subject matter (such as an article or materials) to a different state or thing. *Diamond v. Diehr*, 450 U.S. 175, 184 (1981); *Parker v. Flook*, 437 U.S. 584, 588 n.9 (1978); *Gottschalk v. Benson*, 409 U.S. 63, 70 (1972); *Cochrane v. Deener*, 94 U.S. 780, 787-88 (1876).

Thus, to qualify as a § 101 statutory process, the claim should positively recite the other statutory class (the thing or product) to which it is tied, for example by identifying the apparatus that accomplishes the method steps, or positively recite the subject matter that is being transformed, for example by identifying the material that is being changed to a different state.

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(See Memorandum from John J. Love, Deputy Commissioner for Patent Examination Policy, dated January 7, 2009)

Here, applicant's method steps fail the first prong of the new Federal Circuit decision since they are not tied to another statutory class and can be performed without the use of a particular apparatus. Thus, claims 1-8 and 40-43 are non-statutory.

7. Claim 12 is also rejected under 35 USC 101 as being directed toward non-statutory subject matter because it is software per se. Claim 12 recites "instructions that are *executable*". The current claim language does not specify the software is part of or statically embodied in a physical medium. Software not statically embodied on a physical medium are considered descriptive material per se. As drafted, the claim fails to define any structural and functional interrelationships between the software per se and other elements of the invention that permit the software's function to be realized. (See MPEP § 2106 Section IV B 1 (a)).

8. Claims 20, 21, 23, 24 and 37 are also rejected under 35 USC 101 as being directed toward non-statutory subject matter because they are software per se. The claims recite "a server" and a "synchronization application". It is not clear if the server is a computer program or a physical computer. The current claim language does not specify the software is part of or statically embodied in a physical medium. Software not statically embodied on a physical medium are considered descriptive material per se. As drafted, the claim fails to define any structural and functional interrelationships between the software per se and other elements of the

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invention that permit the software's function to be realized. (See MPEP § 2106 Section IV B 1 (a)).

***Claim Rejections - 35 USC § 103***

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. **Claims 1-8, 20, 21, 23, 24, 37 and 40-43** are rejected under 35 U.S.C. 103(a) as being unpatentable over Ralston et al, US 6,389,454 in view of Cree et al, US 4,866,611.

As per **claim 1**, Ralston et al. teaches a computer-implemented method for providing an on-line appointment between a service provider and a user who is interested in a service the service provider may be able to provide, over a network, said method comprising:

receiving a request from a user system over a network for appointment availability of a service provider during a time period (see abstract, column 2, lines 53-62, and column 4, lines 46-49, an appointment request is made of the service provider for a specific time period);

determining available appointment times within the time period for the service provider through use of a central appointments server having access to a central appointment database that stores calendars for a plurality of service providers, including a first calendar for a service provider (see figures 2 and 3, abstract, column 4, lines 17-35, column 5, lines 17-60, and column

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7, lines 21-35, the available appointment times within the time period for the service provider are determined through a central server which has access to the various facilities or service provider's information; the remote schedule servers store dates and times the facilities and or staff are available);

transmitting the available appointment times to the user system (see column 5, lines 61-67, through column 6, lines 1-12, the available appointment times are transmitted to the user);

receiving a selected appointment time from the available appointment times (see column 5, lines 61-67, through column 6, lines 1-12, the user receives the available appointment times);

Ralston teaches an appointment scheduling system that employs a central schedule server that contains data of scheduled appointments and times that are freely available for scheduling appointments at a plurality of service providers and also coordinates scheduling to accommodate preferred dates and times of the client (column 2, lines 53-67; column 4, lines 35-64), but does not explicitly teach causing a second calendar maintained by the service provider to be checked to verify that the selected appointment time is available in the second calendar; and setting an on-line appointment between the user system and the service provider at the selected appointment time if the selected appointment time is verified to be available in the second calendar.

Cree et al teaches an electronic calendar wherein a calendar owner can automatically reconcile entries that have been made independently on two different calendars (column 4,

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lines 21-38). Further, a comparison of various data in each entry is performed to check for conflicts. Two different copies of a calendar are compared to determine if a conflict exists. If the conflict exists, one of the entries is deleted or modified. Inherently if no conflict arises, the appointment is set in both calendars. Cree also explains (column 4, lines 21-38) that each calendar may be maintained by a different person. Therefore the appointments are not really set until the calendars are reconciled and a check is made for conflict, since there is a chance one of the appointments will be modified or deleted upon the check for conflicts (column 5, lines 39-62 and column 31, line 61 – column 32, line 16). It would have been obvious to one of ordinary skill in the art at the time of the invention to include a check for conflict between schedules prior to scheduling the appointment so as to speed the scheduling process to achieve the predictable results of scheduling appointments during the time period for which there is no conflict.

As per **claim 2**, Ralston et al. teaches a method as recited in claim 1, wherein the time period is a day (see abstract, and column 5, lines 41-50, the appointments are made for a specific time during the day).

As per **claim 3**, Ralston et al. teaches a method as recited in claim 1, wherein receiving the request for appointment availability comprises receiving a time duration for the on-line appointment (see column 5, lines 61-67, through column 6, lines 1-12, the user receives the available appointment times), and wherein determining the available appointment times comprises receiving those times during the time period that the service provider is available for at least the time duration (see column 5, lines 17-67, through column 6, lines 1-12, the available appointment times are times that the service provider is available for at least that time duration).



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As per **claim 4**, Ralston et al. teaches a method as recited in claim 1, wherein setting the online appointment comprises:

transmitting verification information for the on-line appointment to the user system (see column 6, lines 17-24, verification information is transmitted); receiving a verification of the verification information for the on-line appointment; (see column 6, lines 17-24, verification information is transmitted) and subsequently setting the on-line appointment between the user system and the service provider at the selected appointment time when the verification has been received (see column 6, lines 17-24, verification information is transmitted and the appointment is set).

As per **claim 5**, Ralston et al. teaches a method as recited in claim 1, wherein setting the on-line appointment comprises setting a requested online appointment, and subsequently receiving a confirmation for the requested on-line appointment (see column 6, lines 17-24, a confirmation is received).

As per **claim 6**, Ralston et al. teaches a method as recited in claim 5, further comprising: updating the requested on-line appointment to a confirmed on-line appointment after the confirmation has been received (see column 6, lines 17-27, the appointment is confirmed).

As per **claim 7**, Ralston et al. teaches a method as recited in claim 5, wherein the time period is a predetermined day (see abstract, and column 5, lines 41-50, the appointments are made for a specific time during the day), and wherein the network is the Internet (see column 4, lines 17-49, the network is the Internet).

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As per **claim 8**, Ralston et al. teaches a method as recited in claim 1, further comprising: rendering the selected appointment time for the service provider unavailable (see column 5, lines 58-59, the appointment time is inherently rendered unavailable as the appointment times are chosen from the time that the service provider is available).

As per **claim 20**, Ralston et al. teaches an on-line appointment system, comprising: an appointment database configured to store calendars for one or more service providers, an appointment server, configured to furnish access to the calendars via a network to schedule appointments with one or more service providers and thereafter permit confirmation, by the one or more service providers of the appointments that have been scheduled with the one or more service providers (see column 5, lines 17-67, through column 6, lines 1-24, the users can request appointments and confirm them with the service providers),

Ralston teaches an appointment scheduling system that employs a central schedule server that contains data of scheduled appointments and times that are freely available for scheduling appointments at a plurality of service providers and also coordinates scheduling to accommodate preferred dates and times of the client (column 2, lines 53-67; column 4, lines 35-64), but does not explicitly teach a synchronization application configured to review of appointments that have been scheduled with the one or more service providers to determine if the appointments conflict with entries in one or more local software calendars maintained by the one or more service providers, the one or more local software calendars being separate and distinct from the calendars stored by the appointment database.

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Cree et al teaches an electronic calendar wherein a calendar owner can automatically reconcile entries that have been made independently on two different calendars (column 4, lines 21-38). Further, a comparison of various data in each entry is performed to check for conflicts (column 5, lines 39-54). Further, a comparison of various data in each entry is performed to check for conflicts. Two different copies of a calendar are compared to determine if a conflict exists. If the conflict exists, one of the entries is deleted or modified. Inherently if no conflict arises, the appointment is set in both calendars. Cree also explains (column 4, lines 21-38) that each calendar may be maintained by a different person. Therefore the appointments are not really set until the calendars are reconciled and a check is made for conflict, since there is a chance one of the appointments will be modified or deleted upon the check for conflicts (column 5, lines 39-62 and column 31, line 61 – column 32, line 16). It would have been obvious to one of ordinary skill in the art at the time of the invention to include a check for conflict between schedules prior to scheduling the appointment so as to speed the scheduling process to achieve the predictable results of scheduling appointments during the time period for which there is no conflict.

As per **claim 21**, Ralston et al. teaches confirmations for appointments (see column 6, lines 17-24). Ralston et al. does not explicitly disclose wherein said appointment server also sends reminders for confirmed appointments. However, it is old and well known in the art to provide reminders. Therefore, it would have been obvious to one of ordinary skill in the art to disclose reminders for confirmed appointments as it is a common and user-friendly feature that reminds the user the scheduled appointment.

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As per **claim 23**, Ralston et al. teaches an on-line appointment system as recited in claim 20, further comprising a business directory of service providers (see column 2, lines 30-46, the user may have appointments with different service providers. Inherent to they system of Ralston et al is a directory of the service providers. Ralston et al is directed to scheduling within the medical industry therefore when a client access the system for an appointment and enters an access code (column 4, lines 35-50), this code is processed to allow access to the specific organization associated with the access code.)

As per **claim 24**, Ralston et al. teaches appointment database further stores information for at least one of said one or more service providers to reduce subsequent data entry (column 6, lines 1-27 – once the appointment is set, information such as the client information, appointment date and time and facility identity is stored and the appointment is confirmed. Along with the confirmation a unique appointment number is transmitted to the client and the facility. Upon wanting to modify, confirm or cancel the appointment, one must enter the appointment number and details regarding the appointment, i.e, client information, date and time, etc. are retrieved).

As per **claim 37**, Ralston et al teaches an appointment scheduling system that employs a central schedule server that contains data of scheduled appointments and times that are freely available for scheduling appointments at a plurality of service providers (column 2, lines 53-67; column 4, lines 35-64), but does not explicitly teach a synchronization of the calendars of the one or more service providers in the appointment database with the one or more local software calendars of the one or more service providers. Cree et al teaches an electronic calendar wherein a calendar owner can automatically reconcile entries that have been made independently on two different calendars (column 4, lines 21-38). Further, a comparison of various data in each entry

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is performed to check for conflicts (column 5, lines 39-54). Further, a comparison of various data in each entry is performed to check for conflicts. Two different copies of a calendar are compared to determine if a conflict exists. If the conflict exists, one of the entries is deleted or modified. Inherently if no conflict arises, the appointment is set in both calendars. Cree also explains (column 4, lines 21-38) that each calendar may be maintained by a different person. Therefore the appointments are not really set until the calendars are reconciled and a check is made for conflict, since there is a chance one of the appointments will be modified or deleted upon the check for conflicts (column 5, lines 39-62 and column 31, line 61 – column 32, line 16). It would have been obvious to one of ordinary skill in the art at the time of the invention to include a check for conflict between schedules prior to scheduling the appointment so as to speed the scheduling process to achieve the predictable results of scheduling appointments during the time period for which there is no conflict.

As per **claim 40**, the combination of Ralston et al and Cree et al teach two calendars wherein one is the host calendar and the other is the personal calendar (Cree, column 4, lines 21-38), but does not explicitly teach one of the calendars is online. Examiner takes official notice that it is old and well known to automate known processes over the internet. It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the combination of references to include an online calendar because of the known benefits of the internet including allowing access to information from anywhere in the world.

As per **claim 41**, Ralston et al does not explicitly teach causing the second calendar maintained by the service provider to be check comprises determining whether the selected appointment time conflicts with an item on the second another calendar. Cree et al teaches an

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electronic calendar wherein a calendar owner can automatically reconcile entries that have been made independently on two different calendars (column 4, lines 21-38). Further, a comparison of various data in each entry is performed to check for conflicts (column 5, lines 39-54). Two different copies of a calendar are compared to determine if a conflict exists. If the conflict exists, one of the entries is deleted or modified. Inherently if no conflict arises, the appointment is set in both calendars. Cree also explains (column 4, lines 21-38) that each calendar may be maintained by a different person. Therefore the appointments are not really set until the calendars are reconciled and a check is made for conflict, since there is a chance one of the appointments will be modified or deleted upon the check for conflicts (column 5, lines 39-62 and column 31, line 61 – column 32, line 16). It would have been obvious to one of ordinary skill in the art at the time of the invention to include a check for conflict between schedules prior to scheduling the appointment so as to speed the scheduling process to achieve the predictable results of scheduling appointments during the time period for which there is no conflict.

As per **claim 42**, Ralston et al does not explicitly teach causing the second calendar maintained by the service provider to be checked comprises determining whether the selected appointment time for the on-line appointment should be accepted or declined. Cree et al teaches and automatic accept procedure (column 7, lines 22-30). It would have been obvious to one of ordinary skill in the art at the time of the invention to include determining whether the appointment time should be accepted or declined so as to speed the scheduling process to achieve the predictable results of scheduling appointments during the time period for which there is no conflict.

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As per **claim 43**, Ralston et al does not explicitly teach causing the second calendar maintained by the service provider to be checked comprises determining whether the selected appointment time for the on-line appointment should automatically be accepted or declined. Cree et al teaches and automatic accept procedure (column 7, lines 22-30). It would have been obvious to one of ordinary skill in the art at the time of the invention to include determining whether the appointment time should be accepted or declined so as to speed the scheduling process to achieve the predictable results of scheduling appointments during the time period for which there is no conflict.

11. **Claim 12** is rejected under 35 U.S.C. 103(a) as being unpatentable over Ralston et al, US 6,389,454 and Cree et al, US 4,866,611, further in view of Scully et al, US 4,831,551

As per **claim 12**, it is directed to the computer readable medium comprising instructions that are executable to implement the on-line appointment scheduling method of claim 1. Therefore since both Ralston et al and Cree et al teach computer implemented scheduling systems, the same rejection as applied to claim 1 also applies to claim 12. Further, the combination of Ralston et al and Cree et al does not explicitly teach an appointment initially having a pending status and enabling the service provider to confirm the appointment and alter the appointment from pending status to confirmed status. Scully et al teaches an electronic calendaring method for use in a data processing system wherein entries from a plurality of calendars are displayed (column 3, lines 60-67). The calendar entries include code that identify tentative meeting when the meetings are confirmed they are indicated by a confirmed code (column 15, lines 1-64 listed all codes associated with

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meeting status). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the combination of Ralston et al and Cree et al to include the status indications of Scully et al to achieve the predictable results of providing a notification of whether the meeting is set or pending. This makes the scheduling process more efficient.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JOHNNA R. LOFTIS whose telephone number is (571)272-6736. The examiner can normally be reached on M-F 8am-4:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Brad Bayat can be reached on 571-272-6636. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Johnna R Loftis/  
Examiner, Art Unit 3624



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